

MEMORANDUM

April 7, 2003

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney
Glenn Orlin, Deputy Council Staff Director

SUBJECT: ***Introduction:*** Bill 9-03, Development Impact Tax – School Facilities

Councilmembers Perez and Andrews expect to introduce Bill 9-03, *Development Impact Tax – School Facilities*, on April 8. Bill 9-03 would establish a development impact tax to pay for new and expanded public schools. This tax would be similar to the current transportation impact tax, but levied only on new residential development anywhere in the County. At the rates proposed in the bill, Council staff estimates that it would raise about \$10.5 million a year when fully in effect.

The Council has tentatively scheduled a public hearing on Bill 9-03 on April 28 at 7 p.m.

This packet contains:	<u>© number</u>
Bill 9-03	1
Legislative Request Report	11
Question and answer fact sheet	12

Bill No. 9-03
 Concerning: Development Impact Tax –
School Facilities
 Revised: 4-7-03 Draft No. 3
 Introduced: April 8, 2003
 Expires: October 8, 2004
 Enacted: _____
 Executive: _____
 Effective: September 1, 2003
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Perez and Andrews

AN ACT to:

- (1) establish a development impact tax to pay for certain school facilities;
- (2) phase in the application of the school impact tax;
- (3) provide for certain exemptions from and credits against the school impact tax;
- (4) provide for certain uses for revenues from the tax; and
- (5) generally amend the law governing impact taxes and the funding of school facilities.

By adding

Montgomery County Code
 Chapter 52, Taxation
 Article XII, Development Impact Tax for Public School Improvements

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Chapter 52 is amended by adding the following article:

Article XII. Development Impact Tax for Public School Improvements.

52-87. Definitions.

In this Article all terms defined in Section 52-47 have the same meanings, and the following terms have the following meanings:

Development impact tax for public school improvements means a tax imposed to defray a portion of the costs associated with public school improvements that are necessary to accommodate the enrollment generated by the development.

Public school improvement means any capital project of the Montgomery County Public Schools that adds to the number of teaching stations in a public school.

High-rise residential unit means any dwelling unit located in a multifamily building that is taller than 4 stories.

52-88 Findings; purpose and intent.

- (a) The amount and rate of growth will place significant demands on the County to provide public school improvements necessary to support and accommodate that growth.
- (b) The County, through its adoption of the Capital Improvements Program, indicates its commitment to provide public school improvements.
- (c) The County has determined that a combination of approaches will be necessary to fully achieve the level of public school improvements needed to accommodate growth . Thus, the County proposes to fund a program of public school improvements through development impact taxes to support new growth in the County.

- (d) Imposing a development impact tax that requires new development to pay a share of the costs of public school improvements necessitated by that development in conjunction with other public funds is a reasonable method of raising the funds to build improvements in a timely manner.
- (e) The development impact tax for public school improvements will fund, in part, the improvements necessary to increase public school capacity, thereby allowing development to proceed. Development impact taxes authorized in this Article will be used exclusively for public school improvements.
- (f) In order to assure that the necessary public school improvements are constructed in a timely manner, the County intends to make sufficient funds available to construct the public school improvements.
- (g) The County retains the power to determine the public school improvements to be funded by development impact taxes; estimate the cost of such improvements; establish the proper timing of construction of the improvements to meet school capacity needs as identified in the Annual Growth Policy; determine when changes, if any, may be necessary in the County CIP; and do all things necessary and proper to accomplish the purpose and intent of this Article.
- (h) The County intends to further the public purpose of assuring that adequate public school capacity is available in support of new development.
- (i) The County's findings are based on the adopted or approved plans, planning reports, capital improvements programs identified in this Article, and specific studies conducted by Montgomery County Public Schools.

- (j) The County intends to impose development impact taxes for public school improvements until the County has attained build-out as defined by the General Plan.

52-89. Imposition and applicability of tax.

- (a) An applicant for a building permit for a residential development must pay a development impact tax for public school improvements in the amount and manner provided in this Article before a building permit is issued for any residential development in the County unless:
 - (1) a credit for the entire tax owed is allowed under Section 52-93;
 - or
 - (2) an appeal bond is posted under Section 52-56.
- (b) Except as expressly provided in this Article, this tax must be levied, collected, and administered in the same way as the tax imposed under Article VII. All provisions of Article VII apply to this tax unless the application of that Article would be clearly inconsistent with any provision of this Article. This tax is in addition to the tax imposed under Article VII, and any tax paid under this Article must not be credited against any tax due under Article VII.
- (c) The tax under this Article must not be imposed on:
 - (1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville,
 - (2) any Productivity Housing unit, as defined in Section 25B-17(j), which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
 - (3) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or

rent charged for the unit in order to make the unit affordable to households earning less than 50% of the area median income, adjusted for family size;

- (4) any Personal Living Quarters unit built under Sec. 59-A-6.15, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
- (5) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A; and
- (6) any development located in an enterprise zone designated by the State.

(d) The tax under this Article does not apply to:

- (1) any reconstruction or alteration of an existing building or part of a building that does not increase the number of dwelling units of the building; and
- (2) any building that replaces an existing building on the same site to the extent of the number of dwelling units of the previous building, if construction begins within one year after demolition or destruction of the previous building was substantially completed.

However, if in either case the tax due on the new, reconstructed, or altered building is greater than the tax that would have been due on the previous building if it were taxed at the same time, the applicant must pay the difference between those amounts.

- (e) If the type of proposed development cannot be categorized under the residential definitions in Section 52-47 and 52-87, the Department

must use the rate assigned to the type of residential development which generates the most similar school enrollment characteristics.

52-90. Tax rates.

- (a) The Countywide rates for the tax under this Article are:

<i><u>Dwelling type</u></i>	<i><u>Tax per dwelling unit</u></i>
<u>Single-family detached residential</u>	<u>\$3920</u>
<u>Single-family attached residential</u>	<u>\$3220</u>
<u>Multifamily residential (except high-rise)</u>	<u>\$1960</u>
<u>High-rise residential</u>	<u>\$770</u>
<u>Multifamily senior residential</u>	<u>\$0</u>

- (b) The County Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the rates set in this Section.
- (c) The Director of Finance must adjust the tax rates set in or under this Section on July 1 of each odd-numbered year by the annual average increase or decrease in the Consumer Price Index for all urban consumers in the Washington-Baltimore metropolitan area, or any successor index, for the two most recent calendar years. The Director must calculate the adjustment to the nearest multiple of one dollar. The Director must publish the amount of this adjustment not later than May 1 of each odd numbered year.

52-91. Accounting; use of funds.

- (a) The Department of Finance must maintain and keep adequate financial records that:
- (1) show the source and disbursement of all revenues under this Article;
 - (2) account for all funds received; and

- (3) assure that the funds are used exclusively for the public school improvements listed in subsection (d).
- (b) Interest earned on revenues under this Article must be used solely for public school improvements.
- (c) The Department of Finance must annually issue a statement for this account.
- (d) Revenues raised under this Article may be used to fund any:
 - (1) new public elementary or secondary school;
 - (2) addition to an existing public elementary or secondary school;
or
 - (3) modernization of an existing public elementary or secondary school that adds one or more teaching stations.

52-92. Refunds.

- (a) Except as provided in this Section, Section 52-54 applies to any petition for a refund of taxes paid under this Article. Subsections 52-54(a)(1) and (d) do not apply to taxes paid under this Article.
- (b) Any person who has paid a tax under this Article may apply for a refund of the tax if the County has not appropriated the funds for public school improvements of the types listed in Section 52-91(d) by the end of the sixth fiscal year after the tax is collected.
- (c) The Director of Permitting Services must investigate each claim and hold a hearing at the request of the petitioner. Within 3 months after receiving a petition for refund, the Director must provide the petitioner, in writing, with a decision on the refund request. The Director must specify the reasons for the decision, including, if a refund is claimed under subsection (b), a determination of whether funds collected from the petitioner, calculated on a first-in-first-out

basis, have been appropriated or otherwise formally designated for public school improvements of the types listed in Section 52-91(d) within 6 fiscal years.

52-93 Credits.

- (a) Section 52-55 does not apply to the tax under this Article. A property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-91(d). A credit must not be allowed for the cost of any land dedicated for school use, including any land on which the property owner constructs a school.
- (b) If the property owner elects to make a qualified improvement, the owner must enter into an agreement with the Director of Permitting Services, or receive a development approval based on making the improvement, before any building permit is issued. The agreement or development approval must contain:
 - (1) the estimated cost of the improvement, if known then,
 - (2) the dates or triggering actions to start and, if known then, finish the improvement,
 - (3) a requirement that the property owner complete the improvement according to Montgomery County Public Schools standards, and
 - (4) such other terms and conditions as MCPS finds necessary.
- (c) MCPS must:
 - (1) review the improvement plan,
 - (2) verify costs and time schedules,
 - (3) determine whether the improvement is a public school improvement of the type listed in Section 52-91(d),
 - (4) determine the amount of the credit for the improvement, and

- (5) certify the amount of the credit to the Department of Permitting Services before that Department or a municipality issues any building permit.
- (d) An applicant for subdivision, site plan, or other development approval from the County, Gaithersburg, or Rockville, or the owner of property subject to an approved subdivision plan, development plan, or similar development approval, may seek a declaration of allowable credits from MCPS. MCPS must decide, within 30 days after receiving all necessary materials from the applicant, whether any public school improvement which the applicant has constructed, contributed to, or intends to construct or contribute to, will receive a credit under this subsection. If during the initial 30-day period after receiving all necessary materials, MCPS notifies the applicant that it needs more time to review the proposed improvement, MCPS may defer its decision an additional 15 days. If MCPS indicates under this paragraph that a specific improvement is eligible to receive a credit, the Director of Permitting Services must allow a credit for that improvement.
- (e) The Director of Finance must not provide a refund for a credit which is greater than the applicable tax. If, however, the amount of the credit exceeds the amount of the tax due, the property owner may apply the excess credit toward any tax imposed under this Article on any other building permit for development with the same ownership. In this Section, a property has the same ownership as another property if the same legal entity owns at least 30% of the equity in both properties.

Sec. 2. Effective Date; Transition.

- (a) This Act takes effect on September 1, 2003, and applies to any building for which an application for a building permit is filed on or after that date.
- (b) Each taxpayer must pay the development impact tax at:
- (1) 50% of the rates set in Section 52-90, as inserted by Section 1 of this Act, for any building permit application filed between September 1, 2003 and December 31, 2003;
 - (2) 75% of the rates set in Section 52-90 for any building permit application filed between January 1, 2004, and June 30, 2004; and
 - (3) 100% of the rates set in Section 52-90 for any building permit application filed on or after July 1, 2004.

To the extent that any taxpayer pays a lower rate than that set in Section 52-90 because this subsection applies, any credit claimed under Section 52-93 must be reduced by the same ratio.

Approved:

Michael L. Subin, President, County Council

Date

Approved:

Douglas M. Duncan, County Executive

Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 9-03

Development Impact Tax – School Facilities

DESCRIPTION:	Establishes an impact tax on the development of residential property, similar to the transportation impact tax already in effect. Proceeds of this tax would be used to build new public schools or add capacity to existing public schools. Tax rates would be uniform Countywide, and would be based on the relative student generation rates of each type of housing. Housing in enterprise zones and low- and moderate-income would be exempt.
PROBLEM:	Shortfalls in state aid and otherwise insufficient funds to keep pace with school construction needs.
GOALS AND OBJECTIVES:	To provide an additional funding source for school construction that relates directly to the added students generated by new residences.
COORDINATION:	Department of Finance, Montgomery County Public Schools
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	See question-and-answer fact sheet prepared by Council staff for rates in other Maryland counties.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	County tax and revenue laws apply Countywide.
PENALTIES:	Class A for failure to pay.

10 QUESTIONS ABOUT BILL 9-03

(Development Impact Tax – School Facilities)

1. What is a development impact tax? In Montgomery County, the current transportation impact tax is a one-time charge paid by a developer or builder to help cover the cost of major County roads and other transportation improvements needed because of traffic generated by new development. The developer pays this tax before receiving a building permit. Bill 9-03 would create a parallel impact tax to help pay for new schools and additions to existing schools needed to reduce school overcrowding and reflect enrollment increases.

2. Where are impact taxes assessed now, and how much has the tax been? Impact fees or taxes have been assessed on new development since 1986 in the Fairland, White Oak, and Cloverly policy areas (Eastern Montgomery County), in the Germantown area, and since 2001 in the Clarksburg area. The rates vary among these three areas, as shown in the rate tables below. In 2002, the impact tax was extended to the rest of the County, with a somewhat lower rate scale.

3. Who would pay school impact taxes? Bill 9-03 would assess impact taxes on all new residential development in Montgomery County except low- and moderate-income housing and housing in enterprise zones (all exempt from the current impact tax). All 9 other counties in Maryland that assess impact taxes apply the tax countywide or nearly countywide.

4. What impact tax rates are proposed in Bill 9-03? Bill 9-03 proposes the following rates (per dwelling unit) which were based on the comparative student generation rates of the various types of new housing, as calculated by Montgomery County Public Schools staff.

Single-family-detached houses	\$3920
Townhouses	\$3220
Garden apartments	\$1960
High-rise apartments	\$770
Apartments for seniors	\$0

5. How much impact tax revenue would be collected? The amount of revenue collected would depend upon the pace of new construction, which can fluctuate widely from year to year. Council staff estimates that a countywide school impact tax would yield about \$10 million in an average year.

6. What would impact tax revenue be used for? Under Bill 9-03 the funds could only be used for new public school construction and additions to existing public schools.

7. If Bill 9-03 is enacted, when would impact taxes be levied? If enacted, Bill 9-03 would take effect on September 1, 2003. The bill grandfathers building permit applications received by that date. For applications made between September 1 and December 31, 2003 the tax rates would be 50% of those set in the bill, and for applications made between January 1 and June 30, 2004 the rates would be 75% of those set in the bill. The full rates would go into effect on July 1, 2004.

8. How do these rates compare to other Maryland counties? The following table compares the proposed **residential** rates in this bill to the current rates in the County and those in other Maryland counties (tax/dwelling unit). For each category, the rates proposed in Bill 9-03 are near the mid-range of Maryland impact tax rates.

Residential Impact Tax/Fee Rates (tax/dwelling unit)

County	Detached	Townhouses	Apartments
Proposed rates in Bill 9-03*	\$3,920	\$3,220	\$1,960
County District	\$2,100	\$2,100	\$1,100
Clarksburg	\$2,753	\$2,753	\$1,981
Germantown	\$2,492	\$2,492	\$1,794
Eastern Montgomery	\$1,727	\$1,727	\$1,243
	\$4,069	\$2,809	\$2,068
Anne Arundel			
Calvert	\$3,950	\$2,950	\$1,950
Caroline	\$1,500	\$1,500	N/A
Carroll	\$4,744	\$3,595	\$1,925
Charles	\$9,700	\$9,200	\$7,000
Frederick**	\$7,446	\$4,811	\$1,518
Howard***	\$2,640	\$1,200	\$880
Prince George's****	\$5,000	\$5,000	\$5,000
Queen Anne's	\$5,744	\$3,397	\$3,397
St. Mary's	\$4,500	\$4,500	\$4,500

*Add these to the existing rates in the County District, Clarksburg, Germantown, and Eastern Montgomery to calculate the cumulative impact tax rates for each area.

**Part of the Frederick County charge is a road excise tax. *Part of the Frederick County charge is a road excise tax. The charges per unit shown here are based on the median size of dwelling units in each category in Montgomery County: 3,300 sq.ft. for single-family detached units; 1,500 sq.ft. for townhouses; and 1,100 sq.ft. for multi-family units (all not including basements).

**Howard County charges \$.80/sq.ft. These costs per unit are based on the median size of dwelling units in each category in Montgomery County (see above).

***A bill has passed both branches of the General Assembly that would raise these rates to \$7,000/unit for units inside the Beltway and \$12,000/unit for units outside the Beltway, but it has not yet become law.

9. How do these rates compare to the school impact tax rates in other Maryland counties? The following table compares the proposed rates in this bill to the school impact taxes imposed in other Maryland counties (tax/dwelling unit).

Public School Impact Tax/Fee Rates (fee or tax/dwelling unit)

County	Detached	Townhouses	Apartments
--------	----------	------------	------------

Proposed rates in Bill 9-03	\$3,920	\$3,220	\$1,960*
	\$3,161	\$1,997	\$1,433
Anne Arundel			
Calvert	\$3,000	\$2,000	\$1,000
Caroline	\$750	\$750	N/A
Carroll	\$4,197	\$3,097	\$1,543
Charles	\$9,700	\$9,200	\$7,000
Frederick	\$6,509	\$4,365	\$1,218
Prince George's**	\$5,000	\$5,000	\$5,000
Queen Anne's	\$4,730	\$2,569	\$2,569
St. Mary's	\$3,375	\$3,375	\$3,375

* This is the proposed rate for multi-family units that are neither high-rise nor senior-only units. The proposed rates for multi-family high-rise and senior are \$770/unit and \$0/unit, respectively.

** See the note in the prior table regarding the pending change in Prince George's rates.

10. When will the Council consider Bill 9-03? The Council has scheduled a public hearing on April 28, 2003 to take testimony on this Bill and other revenue measures.